

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

HERMINIO PEREZ PEREZ

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

CIVIL NO. 98-1586(CCC)

Re: Criminal No. 92-216CCC

Section 2255

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U.S. DISTRICT COURT
SAN JUAN, P.R.

ORDER

Petitioner has filed a motion (Docket No. 11) requesting a certificate of appealability from the judgment entered on December 20, 1999 (Docket No. 10), dismissing his 2255 Petition.

Under the provisions of 28 U.S.C. § 2253, petitioner must be granted a certificate of appealability in order to proceed with the appeal. A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

In Smith v. United States, 989 F. Supp. 371 (D. Mass. Dec. 30, 1997), the district court framed the required standard:

Several circuits have considered this issue by asking whether the standard for the issuance of a certificate of appealability is the same as the standard for the issuance of a certificate of probable cause. The majority have concluded that the standard is the same, except that in granting a certificate of appealability a court is now required to indicate which specific issue or issues satisfy the threshold showing.

In Barefoot v. Estelle, the Supreme Court stated that a "certificate of probable cause requires petitioner to make a 'substantial showing of the denial of [a] federal right' ... [by demonstrating] that the issues are debatable among jurists of reason; that a court could resolve the issues in a different manner; or that the questions 'are adequate to deserve encouragement to proceed further.'"

(citations omitted).

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[Signature]

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For the reasons set forth in the Report and Recommendation of August 10, 1999 (Docket No. 8) adopted by the Court, we find that petitioner has not made a substantial showing of the denial of a constitutional right.

WHEREFORE, for the reasons stated above, the request for a certificate of appealability (Docket No. 11) is DENIED.

Petitioner is advised that Interim Local Rule 22.1(a)¹ of the United States Court of Appeals for the First Circuit provides that "the procedure set forth in Fed. R. App. P. 22(b) shall apply to requests for certificates of appealability in actions under ... 28 U.S.C. § 2255."

This Court having denied the application for issuance of a certificate of appealability, a request for a certificate of appealability should now be filed promptly before the Court of Appeals. The application before the Court of Appeals should be "accompanied by a copy of the district court's order and a memorandum giving specific and substantial reasons, and not mere generalizations, why a certificate should be granted ... If no sufficient memorandum has been filed ..., the certificate may be denied without further consideration. The effect of a denial is to terminate the appeal." Loc. R. 22.1(c) (emphasis supplied).

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 16th day of February, 2000.


CARMEN CONSUELO CEREZO
U.S. DISTRICT JUDGE

¹ Interim Local Rule 22.1 applies to processing of non-capital Section 2255 petitions filed on or after April 24, 1996, as per this Circuit's order of July 22, 1997. Petitioner's Section 2255 petition was filed on July 5, 1996.

s/c: H. Perez 2-15-00
C. Velez
WB